<center>### REMARKS</center>

Claims 1-50 are pending in the present application. By this Response, claims 6, 29 and 46 are amended. Claims 6, 29 and 46 are amended to recite "receiving test question timing data from the client device, the test question timing data representing an elapsed time used by the remotely located user in attempting to answer a test question from a plurality of test questions that are to be provided to the client device during administration of the test." Support for this amendment is found at least on page 33, lines 19-32 of the current specification. Reconsideration of the claims in view of the above amendments and the following remarks is respectfully requested.

I.   35 U.S.C. § 102, Alleged Anticipation, Claims 6-10, 12-18, 29-33, 35-41 and 46

The Office Action rejects claims 6-10, 12-18, 29-33, 35-41, and 46 under 35 U.S.C. § 102(e) as being allegedly anticipated by Greene et al. (U.S. Patent Application Publication Number US 2002/0172931). This rejection is respectfully traversed.

As to claims 6, 29, and 46, the Office Action states:

> Regarding Claims 6, 29, and 46, Greene discloses administering a test to a remotely located user of a client device; receiving test question timing data (e.g. time stamp information for answer input) from the client device, the test question timing data representing an elapsed time used by the remotely located user in attempting to answer the test question; and outputting the test question timing data to a proctor device (i.e. proctor workstation) such that the proctor device may monitor the elapsed time in attempting to answer the test question for the remotely located user. See p.4, [0041] and [0043]. Greene discloses a controller; and at least one interface coupled to the controller, wherein the controller administers a test to a remotely located user of a client device via the at least one interface. See Claim 21. Greene discloses a computer program product. See Claim 41.
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> In response to Applicant's arguments, Examiner maintains that Greene discloses receiving test question timing data from the client device, the test question data representing and elapsed time used by the remotely located user in attempting to answer a test question (i.e., currently elapsed time of the test session). See p.4, [0041]. A test session in Greene is capable of comprising a test question. There can be one test question in Greene that makes up an entire test question. Therefore, Examiner also maintains that Greene discloses the test

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question timing data to a proctor device such that the proctor device may monitor the elapsed time used in attempting to answer the test question for the remotely located user.

Office Action dated June 15, 2004, pages 2-3.

Claim 6, which is representative of the other rejected independent claims 29 and 46 with regard to similarly recited subject matter, reads as follows:

> 6.   A method of monitoring a test question response time, comprising the steps of:
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> administering a test to a remotely located user of a client device;
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> receiving test question timing data from the client device, the test question timing data representing <u>an elapsed time used by the remotely located user in attempting to answer a test question from a plurality of test questions that are to be provided to the client device during administration of the test</u>; and
>
> outputting the test question timing data to a proctor device such that the proctor device may monitor the elapsed time in attempting to answer the test question for the remotely located user. (emphasis added)

A prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). All limitations of the claimed invention must be considered when determining patentability. *In re Lowry*, 32 F.3d 1579, 1582, 32 U.S.P.Q.2d 1031, 1034 (Fed. Cir. 1994). Anticipation focuses on whether a claim reads on the product or process a prior art reference discloses, not on what the reference broadly teaches. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 218 U.S.P.Q. 781 (Fed. Cir. 1983). Applicants respectfully submit that Greene does not identically show every element of the claimed invention arranged as they are in the claims. Specifically, Greene does not teach receiving test question timing data from the client device, the test question timing data representing <u>an elapsed time used by the remotely located user in attempting to answer a test question from a plurality of test questions that are to be provided to the client device during administration of the test</u>, as recited in claim 6.

Greene is directed towards a system and method for monitoring testing environments from a remote location. Test environment data is obtained from sensor devices in the user's testing environment and forwarded to a proctor workstation. The

test environment data may be recorded along with test input data from the user's client

device for later use should cheating be suspected.

In the rejection of claim 6, the Office Action refers to the following portions of

Greene:

> [0041] In addition, the testing database 450 may store an indication of the number
> of users to which the particular test was administered. This information may be
> used by a payment system to determine an amount to bill the test developer
> system operator for use of the test administration service of the test administration
> system. The session timing device 460 is used to time each of the currently active
> sessions being administered by the test administering system. The session timing
> device 460 determines a currently elapsed time of the test session, compares the
> currently elapsed time to a total time length of the administered test, and
> determines whether the test should be ended based on the comparison. In addition,
> the session timing device 460 may be used to timestamp video and audio data
> received from the client devices as well as test answer input received from the
> client devices. In this way, if a user is suspected of cheating on a test, the video,
> audio and input data may be correlated to determine whether an input was the
> result of unauthorized aide being provided to the user. (emphasis added)

> [0043] In operation, a user of client device may log onto the central server by
> entering, for example, a universal resource locator (URL) of the test
> administration system central server using a web browser application in a manner
> generally known in the art. The user may be presented with a list of tests available
> and may select a test to take using an input mechanism associated with the client
> device and a web page downloaded to the client device, for example. Once the
> user selects a test to be administered, a session is established and a session id is
> assigned. In addition, a proctor workstation is assigned to monitor the user's
> testing environment while the user takes the test. The session entry is stored in the
> session database 440 and the test is retrieved from the testing database 450. The
> test is then downloaded to the user's client device via the network interface 420.
> The session timing device 460 is then initiated for the session and is used to time
> the test as well as provide time stamp information for video, audio and answer
> input data received from the client device. Video and/or audio input to the client
> device is forwarded to the central server and received by the controller 410 via the
> network interface 420. The video and/or audio data may then be forwarded to the
> proctor workstation via the workstation interface 430 and may be stored in the
> testing environment storage device 470. Routing of the video and/or audio data as
> well as storing of this data in the testing environment storage device 470 may be
> based on a comparison of the header information for the video and/or audio data
> to session information stored in the session database 440. (emphasis added)

From the above, it is clear that Greene teaches an elapsed time of the test session.

Though not explicitly taught by Greene, the Examiner interprets that "the test session in

Greene is capable of comprising a test question. There can be one test question in Greene that makes up an entire test question." In Greene, a session timing device is used to time each of the currently active <u>sessions</u> being administered by the test administering system. The session timing device determines a currently elapsed time of the test session, compares the currently elapsed time to a total time length of the administered test, and determines whether the test should be ended based on the comparison. Even if Greene were to teach that an entire test session would consist of a single question, which it does not, the timing is for <u>the session</u> and does not teach an elapsed time used by the remotely located user in attempting to answer a test question <u>from a plurality of test questions that are to be provided to the client device during administration of the test</u>.

Greene teaches that test answer input received from the client may receive a timestamp. Although Greene does teach a timestamp, this timestamp is not an elapsed time used by the remotely located user in attempting to answer a test question. Greene's timestamp data is used to correlate captured video/audio with test question answers to determine whether a user input was the result of unauthorized aide being provided. Greene does not teach or suggest using a timestamp to determine an elapsed time and furthermore, Greene does not use a timestamp to monitor an elapsed time in attempting to answer a test question for a remotely located user <u>from a plurality of test questions that are to be provided to the client device during administration of the test</u>, as recited in claim 6.

Additionally, Claim 6 recites monitoring a test question response time, which includes outputting the test question timing data to a proctor device such that the proctor device may monitor the elapsed time used in attempting to answer the test question for the remotely located user. Greene does not teach or suggest an elapsed time that would allow a proctor device to perform this feature. In other words, while Greene may teach proctor workstations being used to monitor the testing environment, there is nothing in Greene that teaches or even suggests that the proctor workstations are provided with test question timing data representing an elapsed time used by a remotely located user in attempting to answer a test question. To the contrary, Greene only teaches providing the proctor workstations with a total elapsed time for the entire session, not individual questions.

In view of the above, Applicants respectfully submit that Greene does not teach receiving test question timing data from the client device, the test question timing data representing an elapsed time used by the remotely located user in attempting to answer a test question from a plurality of test questions that are to be provided to the client device during administration of the test, as recited in claim 6. Claims 29 and 46 recite similar features to claim 6 and thus, define over Greene for similar reasons as noted above.

In view of the above, Applicants respectfully submit that Greene does not teach each and every feature of independent claims 6, 29 and 46 as is required under 35 U.S.C. § 102(e). At least by virtue of their dependency on claims 6 and 29, respectively, Greene does not teach each and every feature of dependent claims 7-10, 12-18, 30-33, and 35-41. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 6-10, 12-18, 29-33, 35-41, and 46 under 35 U.S.C. § 102(e).

Additionally, Greene does not teach the specific features recited in dependent claims 7-10, 12-18, 30-33, and 35-41. For example, with regard to claims 17 and 40, Greene does not teach monitoring the test question timing data for evidence of greater than expected response time to the test question, wherein outputting the test question time data to a proctor device is performed in response to determining that evidence of greater than expected response time to the test question is present, as recited in the claims. The Office Action alleges that this feature is taught by Greene in paragraph [0041], presented above. As discussed previously, Greene does not teach an elapsed time used by the remotely located user in attempting to answer a test question. Greene does not monitor test question timing data for evidence of greater than expected response time to the test question. Greene monitors an elapsed time of a test session to determine if the test should be ended. Greene does not teach or even suggest determining that evidence of greater than expected response time to the test question is present.

In addition, with regard to claims 18 and 41, Greene does not teach or suggest the specific feature that monitoring the test question timing data for evidence of greater than expected response time to the test question includes comparing previously received test question timing data to currently received test question timing data to determine if a change in the test question timing data indicates evidence of greater than expected response time to the test question. As discussed above, Greene does not teach or suggest

monitoring the test question timing data for evidence of greater than expected response time to the test question. To the contrary, Greene only teaches monitoring the timing data for the entire session. Thus, Greene cannot teach monitoring test question timing data for evidence of greater than expected response time, and furthermore, cannot teach the specific mechanism of monitoring question timing data by comparing previously recited test question timing data to currently received test question timing data, as recited in claims 18 and 41.

Thus, in addition to being dependent on their respective independent claims, claims 7-10, 12-18, 30-33, and 35-41 are also distinguished over the Greene reference based on the specific features recited therein. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 6-10, 12-18, 29-33, and 35-41, and 46 under 35 U.S.C. § 102(e).

II. 35 U.S.C. § 103, Alleged Obviousness, Claims 1-3, 23-25, 28, 34 and 47-49

The Office Action rejects claims 1-3, 23-25, 28, 34, and 47-49 under 35 U.S.C. § 103(a) as being allegedly unpatentable over Remschel (U.S Patent Number 6,208,832) in view of Turner et al. (U.S. Patent Number 6,633,742). This rejection is respectfully traversed.

As to claims 1, 23, 28, 34, and 47, the Office Action states:

> Regarding Claims 1, 23, 28, 34, and 47, Remschel discloses identifying presentation of test questions on the data processing system. See Col. 2: 17-22. Remschel discloses monitoring test question timing data in which the test question timing data represents an elapsed time since an answered question from the test question has been presented (i.e. the elapsed time since the start of the current question). See Col. 2: 33-39. Remschel discloses an elapsed time since an answered question from the test question has been presented (i.e. the elapsed time since the start of the current question). See Col. 2: 33-39 and Col. 12:55-63. Remschel discloses a bus system (i.e. connecting cable) and a communications unit connected to the bus system (i.e. communication router). See FIG. 1. Memory including a set of instructions would have been an inherent feature of Remschel's invention. Remschel's invention is capable of representing wherein the elapsed time is an amount of time in attempting to answer a test question. Remschel discloses representing an elapsed time since the start of a current question. From this information, the amount of time in attempting to answer a question is capable of being determined.

Remschel does not disclose expressly generating an alert (i.e. notifying the user) after the test question timing data exceeds a threshold, wherein the alert apprises a test taker that the elapsed time is excessive for the test question. However, Turner teaches the concept of generating an alert after timing data exceeds a threshold, wherein the alert apprises (i.e., notifies) a test taker that the elapsed time is excessive in Col. 21: 8-12. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate into the method and system of Remschel generating an alert after the test question timing data exceeds a threshold, in light of the teaching of Turner, in order to inform that a task that needs to be performed.

In response to Applicant's arguments, it is Examiner's position, that given its broadest reasonable interpretation, a question is an expression of inquiry that invites or calls for a reply. A task in Turner is an expression of inquiry that invites or calls for a reply. Therefore, it would be reasonable to conclude that a question in the claimed invention corresponds to a task in Turner.

Office Action dated June 15, 2004, pages 7-8.

Claim 1, which is representative of the other rejected independent claims 23, 28, and 47 with regard to similarly recited subject matter, reads as follows:

1.   A method for monitoring responses to test questions presented in a data processing system, the method comprising the computer implemented steps of:
        identifying presentation of the test questions on the data processing system;
        responsive to the presentation of the test questions on the data processing system, monitoring test question timing data in which the test question timing data represents an elapsed time since an answered question from the test questions has been presented, wherein the elapsed time is an amount of time in attempting to answer a test question; and
        generating an alert after the test question timing data exceeds a threshold, wherein the alert apprises a test taker that the elapsed time is excessive for the test question. (emphasis added)

Neither Remschel nor Turner, either alone or in combination, teaches or suggests generating an alert after the test question timing data exceeds a threshold, wherein the alert apprises a test taker that the elapsed time is excessive for a test question and wherein the elapsed time is an amount of time in attempting to answer a test question. Remschel is directed to a learning system in which the test taking process is automated and includes a response analyzer. As stated in the Office Action (page 7), Remschel does not disclose generating an alert after the test question timing data exceeds a threshold, wherein the alert apprises a test taker that the elapsed time in attempting to answer a test question is

excessive for the test question. However, The Office Action alleges that this feature is taught by Turner at column 21, lines 8-12, which reads as follows:

> In one embodiment, the system 100 tracks <u>the elapsed time since a user has been certified in a particular task</u>. When the elapsed time exceeds a pre-defined threshold, the user is notified that they should return to the Learn working mode to be re-evaluated for re-certification. (emphasis added)

Turner is directed to a system for facilitating access and presentation of information to a user. The system provides training and documentation with an integrated presentation of knowledge that adapts to the needs of the user based on a proficiency level of the user, a working mode (such as learn, perform, or browse), and a sub-topic. For example, a user may be presented information, which aids in learning about creating a web page tailored to an intermediate level of proficiency. The portion of Turner cited by the Office Action only teaches notifying a user when a re-certification process should be performed. In other words, Turner is concerned with notifying a user when <u>his certification for a particular task expires</u>. The section of Turner, cited by the Office Action, clearly states <u>the elapsed time since a user has been certified in a particular task</u> and when the elapsed time, <u>since a user has been certified in a particular task</u>, exceeds a pre-defined threshold, the user is notified that they should return to the Learn working mode to be re-evaluated for re-certification. Thus, Turner does not teach or suggest generating an alert after <u>test question</u> timing data exceeds a threshold, wherein the alert apprises a test taker that the elapsed time <u>in attempting to answer a test question</u> is excessive for the <u>test question</u>.

Furthermore, Applicants respectfully submit that the task of Turner is not a test question. The following portion of Turner describes a "task":

> Many tasks are often complicated and comprise several smaller tasks or sub-tasks. Each sub-task may further comprise several steps to complete. The Perform working mode automates the selection of tasks so that the user does not have to manually select all of the sub-tasks for a given task. The Perform mode further allows the selection of multiple tasks, automatically sequences those tasks in a proper order and removes redundant sub-tasks. <u>The Perform working mode classifies the tasks as installation, maintenance, troubleshooting or replacement tasks</u>. Alternately, other classifications may be used in addition or in place of these classifications. <u>Troubleshooting tasks, for example, may include tasks for diagnosing defects and malfunctions within the associated product or process</u>, whether latent, patent or user induced. (emphasis added)

Turner, column 19, line 60 through column 20, line 7.

While the Office Action considers a task to be the equivalent to a question, the task of Turner comprises several smaller tasks or sub-tasks and each sub-task may further comprise several steps to complete. Turner teaches that the tasks may be classified as installation, maintenance, troubleshooting, or replacement tasks. Thus, a task is not a specific test question.

Turner does not even mention test question timing data and is not directed to monitoring when a user spends too much time answering a test question, as in the presently claimed invention. Certification, in the context of Turner, refers to certifying a user's comprehension of the subject matter presented and issuing or printing an accreditation, such as a certificate, acknowledging the user's proficiency and is not related to time spent answering a question on a test.

Moreover, there is no teaching or suggestion in either of Remschel or Turner regarding the desirability of combining these two systems in the manner alleged by the Office Action. The timing data in Remschel is used to determine when to close a question of a test to a plurality of students. The timing data in Turner is used to determine when a particular user needs to resume a certification process. There is no teaching or suggestion in Remschel to the effect that it would be desirable to monitor to determine when a student needs to resume a certification process. Moreover, there is no teaching or suggestion in Turner regarding the desirability to monitor a test question time for a plurality of students to determine when to close a question. Thus, the only teaching or suggestion to even attempt to combine Remschel and Turner is obtained from Applicants' own disclosure and is completely based on a hindsight reconstruction having first had benefit of the knowledge of Applicants' claimed invention and disclosure.

Furthermore, there is no reason why one of ordinary skill in the art would modify Turner or the combination of Turner with Remschel to generate an alert when an amount of time for answering a question exceeds a threshold, wherein the alert apprises a test taker that the elapsed time in attempting to answer a test question is excessive for the test question. Turner is directed to a system in which it is determined whether a user's certification for a task has expired. Turner has nothing to do with elapsed times of test questions and thus, one of ordinary skill in the art, being presented only with Remschel

and Turner would not determine to modify Remschel and Turner to <u>generate an alert after</u> <u>an elapsed time of test questions exceeds a threshold, wherein the alert apprises a test</u> <u>taker that the elapsed time in attempting to answer a test question is excessive for the test</u> <u>question.</u> To the contrary, any combination of Remschel and Turner would merely result in a system substantially as taught by Remschel in which a user's information is monitored to determine if their certification has expired. Any alleged combination of Remschel and Turner still would not result in the elapsed time for answering a question being monitored with an alert being generated when it is determined that the elapsed time of a test question exceeds a threshold, wherein the alert apprises a test taker that the elapsed time in attempting to answer a test question is excessive for the test question.

Thus, neither Remschel nor Turner, either alone or in combination, teaches or suggests generating an alert after the test question timing data exceeds a threshold, wherein the alert apprises a test taker that the elapsed time in attempting to answer a test question is excessive for the test question, as recited in claims 1, 23, 28 and 47. At least by virtue of their dependency on claims 1, 23, 28 and 47, respectively, neither Remschel nor Turner, either alone or in combination, teach or suggest the features of dependent claims 2-3, 24-25, 34, and 48-49. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 1-3, 23-25, 28, 34, and 47-49 under 35 U.S.C. § 103(a).

In addition, with regard to claim 34, neither Remschel nor Turner, either alone or in combination, teaches or suggests the specific feature wherein a controller alerts the remotely located user when the test question timing data exceeds a predetermined threshold. As discussed previously, Remschel, Turner, and the combination of Remschel and Turner do not teach or suggest alerting a remotely located user when the test question timing data exceeds a threshold.

In another example, with respect to claim 49, neither Remschel nor Turner, either alone or in combination, teaches or suggests the specific feature of billing a client for monitoring the presentation of test question. Billing is not discussed by Remschel or by Turner.

Thus, in addition to being dependent on their respective independent claims, claims 2-3, 24-25, 34, and 48-49 are also distinguished over the Remschel and Turner references based on the specific features recited therein.

III.   **35 U.S.C. § 103, Alleged Obviousness, Claims 4-5, 26-27 and 50**

The Office Action rejects claims 4-5, 26-27, and 50 under 35 U.S.C. § 103(a) as being allegedly unpatentable over Remschel in view of Turner as applied to claims 1, 23, and 47 above, and further in view of Walker et al. (U.S. Patent Number 6,093,026). This rejection is respectfully traversed.

As to claims 4-5, 26-27, 49 and 50, the Office Action states:

> Regarding Claims 4, 26, and 49, Remschel/Turner does not disclose expressly billing a client for monitoring the presentation of test questions (i.e. billing information). However, Walker teaches the concept of billing for a providing a service in Col.4:33-40. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate into the method and system of Remschel/Turner billing a client for monitoring the presentation of test questions, in light of the teaching of Walker, in order to charge the client for tests conducted on its behalf.
>
> Regarding Claims 5, 27, and 50, Remschel/Turner does not disclose expressly storing an identification of a number of test takers for the test; and billing a client based on the number of test takers for the test. However, Walker teaches billing a client for surveys conducted on its behalf in Col.4:33-39. It is obvious that the charge to the client would have been somehow determined by the quantity of surveys administered. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill to incorporate the aforementioned limitation into the method and system of Remschel/Turner, in light of the teaching of Walker, in order to specify how the client is to be charged for tests conducted on its behalf.

Office Action dated June 15, 2004, pages 9-10.

Since claims 4-5, 26-27, and 50 depend from independent claims 1, 23 and 47, respectively, the same distinctions between Remschel and Turner, and the invention recited in claims 1, 23 and 47, apply to dependent claims 4-5, 26-27, and 50. In addition, Walker does not provide for the deficiencies of Remschel and Turner with regard to independent claims 1, 23 and 47. As discussed in the previous Response to Office Action dated September 2, 2003, Walker does not teach or suggest generating an alert after the

test question timing data exceeds a threshold. Thus, any alleged combination of Walker with Turner and Remschel still would not result in the invention recited in claims 1, 23 and 47 from which claims 4-5, 26-27, and 50 depend.

Since Remschel, Turner, and Walker do not teach or suggest these features that are present in independent claims 1, 23 and 47, the alleged combination of Remschel, Turner, and Walker still does not teach or suggest the features of dependent claims 4-5, 26-27, and 50 at least by virtue of their dependency on independent claims 1, 23 and 47. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 4-5, 26-27, and 50 under 35 U.S.C. § 103(a).

Furthermore, Walker is only cited as allegedly teaching billing a client for monitoring the presentation of the test questions, as recited in claims 4 and 26, and billing a client based on the number of test takers for a test, as recited in claims 5, 27 and 50. While Walker may disclose billing information that specifies how an entity is to be charged for surveys conducted on its behalf, Walker does not teach any further specifics on the billing information. Thus, Remschel, Turner, and Walker, either alone or in combination, do not teach or suggest the specific feature of billing a client for monitoring the presentation of test questions, as recited in claims 4 and 26, or the specific feature of billing a client based on the number of test takers for the test, as recited in claims 5, 27 and 50.

IV.   35 U.S.C. § 103, Alleged Obviousness, Claims 6 and 29

The Office Action rejects claims 6 and 29 under 35 U.S.C. § 103(a) as being allegedly unpatentable over New, III (U.S Patent Number 6,155,834) in view of Hoehn-Saric et al. (U.S. Patent Number 5,915,973). This rejection is respectfully traversed.

As to claims 6, 29, and 46, the Office Action states:

> Regarding Claims 6 and 29, New discloses receiving question timing data from a client device, the test question timing data representing an elapsed time used by the user in attempting to answer a test question (i.e., elapsing when a target word is said and/or shown), and outputting the test question timing data to a proctor device (i.e., response timer) such that the proctor device may monitor the elapsed time in attempting to answer the test question for the remotely located

user. See Col. 13: 46-54. New discloses a controller (i.e., computer). See Col.6:46-48.

New does not disclose expressly a remotely located user. However, Hoehn-Saric teaches administering tests to remotely located users and retrieving testing data from the remotely located users in the Abstract. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate administering tests to remotely located users and retrieving testing data from the remotely located users into the method and system of New, in light of the teaching of Hoehn-Saric, in order to automate the process of test delivery and eliminate the need for support personnel at a test site.

Office Action dated June 15, 2004, pages 10-11.

Claim 6, which is representative of the other rejected independent claim 29 with regard to similarly recited subject matter, reads as follows:

> 6. A method of monitoring a test question response time, comprising the steps of:
> administering a test to a remotely located user of a client device;
> receiving test question timing data from the client device, the test question timing data representing <u>an elapsed time used by the remotely located user in attempting to answer a test question from a plurality of test questions that are to be provided to the client device during administration of the test</u>; and
> <u>outputting the test question timing data to a proctor device such that the proctor device may monitor the elapsed time in attempting to answer the test question for the remotely located user</u>. (emphasis added)

New and Hoehn-Saric, taken alone or in combination, fail to teach or suggest receiving test question timing data from the client device, the test question timing data representing an elapsed time used by the remotely located user in attempting to answer a test question from a plurality of test questions that are to be provided to the client device during administration of the test, and outputting the test question timing data to a proctor device such that the proctor device may monitor the elapsed time in attempting to answer the test question for the remotely located user.

New is directed to a system that teaches a student to sight read using a computer. The term "Sight read" means to instantly recognize words without having to sound them out or go through other processes such as explaining the definition of the word. The New invention utilizes a computer to systematically and continuously adjust the requirements for word perception and recognition based on characteristics and ongoing responses of the individual student in a way that increases the speed and accuracy of word recognition.

Thus, with the system of New, a student is either shown or hears a word and has a specific amount of time to provide an answer. New does not teach or suggest receiving test question timing data from the client device, the test question timing data representing an elapsed time used by the remotely located user in attempting to answer a test question from a plurality of test questions that are to be provided to the client device during administration of the test. The Office Action alleges that New teaches this feature at column 13, lines 46-54, which reads as follows:

> Step 690 also starts a response time counter that may be implemented with the clock C510 shown in FIG. 18. The response time counter determines how fast the student responds to the IP. The process continues with step 700.
>
> Step 700, "Response on time", follows step 690 and is a decision point which determines if the student's response to the IP is fast enough. As mentioned above, response timer begins elapsing when the target word is said and/or shown in step 690. If the end of the allotted time period occurs before the student responds, the answer is no to step 700, the response is counted as incorrect, and the procedure ends with a recordation of the students performance in record results step 810. If the student responds within the allotted time, the process continues with step 710.
>
> The preferred allotted time period is 10 seconds for students age 10 and above and 10 to 25 seconds for students less than age ten with the allotted time inversely proportional to age between 0 and 10 years.

In this section, New clearly states that once a student hears or is shown a target word, an elapsing timer starts, which gives the student an allotted time to answer the question. If the student fails to answer in the allotted time, the answer is counted as incorrect. If the student answers before the timer elapses, the student moves on to the next word. Thus, the elapsing timer of New is not a timing data representing an elapsed time used by the remotely located user in attempting to answer a test question from a plurality of test questions that are to be provided to the client device during administration of the test, and New and Hoehn-Saric, taken alone or in combination fails to teach or suggest the specific features of claims 6 and 29.

Furthermore, New and Hoehn-Saric, taken alone or in combination, fails to teach or suggest outputting the test question timing data to a proctor device such that the proctor device may monitor the elapsed time in attempting to answer the test question for the remotely located user. While Hoehn-Saric may teach a remotely located user, neither

New nor Hoehn-Saric teaches or suggest a proctor device that may monitor the remotely located user's elapsed time in attempting to answer the test question.

Moreover, there is no teaching or suggestion in either of New or Hoehn-Saric regarding the desirability of combining these two systems in the manner alleged by the Office Action. The elapsing timer in New is to provide the student an allotted time in which to provide an answer. Hoehn-Saric does not provide timing data of any sort. There is no teaching or suggestion in New to the effect that it would be desirable to receive test question timing data from the client device, the test question timing data representing an elapsed time used by the remotely located user in attempting to answer a test question from a plurality of test questions that are to be provided to the client device during administration of the test. Moreover, there is no teaching or suggestion in Hoehn-Saric regarding the desirability to providing timing data representing an elapsed time used by the remotely located user in attempting to answer a test question. Thus, the only teaching or suggestion to even attempt to combine New and Hoehn-Saric is obtained from Applicants' own disclosure and is completely based on a hindsight reconstruction having first had benefit of the knowledge of Applicants' claimed invention and disclosure.

Furthermore, there is no reason why one of ordinary skill in the art would modify Hoehn-Saric or the combination of Hoehn-Saric with New to representing an elapsed time used by the remotely located user in attempting to answer a test question. New is directed to a system that teaches a student to sight read using a computer. Hoehn-Saric has nothing to do with elapsed times of test questions and thus, one of ordinary skill in the art, being presented only with New and Hoehn-Saric would not determine to modify New and Hoehn-Saric to receive test question timing data from the client device, the test question timing data representing an elapsed time used by the remotely located user in attempting to answer a test question from a plurality of test questions that are to be provided to the client device during administration of the test. To the contrary, any combination of New and Hoehn-Saric would merely result in a system substantially as taught by New in which a student would be able to remotely hear or see a word and in response to hearing or seeing the word have an allotted elapsing time to provide an answer. Any alleged combination of New and Hoehn-Saric still would not result in

timing data from the client device, <u>the test question timing data representing an elapsed time used by the remotely located user in attempting to answer a test question.</u>

Thus, neither New nor Hoehn-Saric, taken alone or in combination, teach or suggest the specific features of independent claims 6 and 29. At least by virtue of their dependency on claims 1, 23, 28 and 47, the specific features of dependent claims 7-22 and 30-45 are not taught or suggest by New and Hoehn-Saric, taken alone or in combination. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 6 and 29 under 35 U.S.C. § 103(a).

V.   <u>35 U.S.C. § 103, Alleged Obviousness, Claims 11, 19, 20, 34, 42 and 43</u>

The Office Action rejects claims 11, 19, 20, 34, 42 and 43 under 35 U.S.C. § 103(a) as being allegedly unpatentable over New/Hoehn-Saric as applied to claims 6 and 29 above, and further in view of Turner. This rejection is respectfully traversed.

Claims 11, 19, 20, 34, 42 and 43 are dependent on independent claims 6 and 29 and, thus, these claims distinguish over New and Hoehn-Saric for at least the reasons noted above with regards to claims 6 and 29. Moreover, Turner does not provide for the deficiencies of New and Hoehn-Saric and, thus, any alleged combination of New, Hoehn-Saric and Turner would not be sufficient to reject independent claims 6 and 29 or claims 11, 19, 20, 34, 42 and 43 by virtue of their dependency. That is, Turner does not teach receiving test question timing data from the client device, the test question timing data representing an elapsed time used by the remotely located user in attempting to answer a test question from a plurality of test questions that are to be provided to the client device during administration of the test.

Moreover, the Office Action may not use the claimed invention as an "instruction manual" or "template" to piece together the teachings of the prior art so that the invention is rendered obvious. In re Fritch, 972 F.2d 1260, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992). Such reliance is an impermissible use of hindsight with the benefit of Applicant's disclosure. Id. Therefore, absent some teaching, suggestion, or incentive in the prior art, New, Hoehn-Saric and Turner cannot be properly combined to form the claimed invention. As a result, absent any teaching, suggestion, or incentive from the prior art to

make the proposed combination, the presently claimed invention can be reached only through an impermissible use of hindsight with the benefit of Applicant's disclosure a model for the needed changes.

In view of the above, New, Hoehn-Saric and Turner, taken alone or in combination, fail to teach or suggest the specific features recited in independent claims 6 and 29, from which claims 11, 19, 20, 34, 42 and 43 depend. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 11, 19, 20, 34, 42 and 43 under 35 U.S.C. § 103(a).

VI.   35 U.S.C. § 103, Alleged Obviousness, Claims 21 and 44

The Office Action rejects claims 21 and 44 under 35 U.S.C. § 103(a) as being unpatentable over New/Hoehn-Saric/Turner as applied to claims 19 and 42 above, and further in view of Dattatri (U.S. Patent Application Publication Number 2002/0049815). This rejection is respectfully traversed.

Claims 21 and 44 are dependent on independent claims 6 and 29 and, thus, these claims distinguish over New, Hoehn-Saric and Turner for at least the reasons noted above with regards to claims 6 and 29. Moreover, Dattatri does not provide for the deficiencies of New, Hoehn-Saric and Turner and, thus, any alleged combination of New, Hoehn-Saric, Turner and Dattatri would not be sufficient to reject independent claims 6 and 29 or claims 21 and 44 by virtue of their dependency. That is, Dattatri does not teach receiving test question timing data from the client device, the test question timing data representing an elapsed time used by the remotely located user in attempting to answer a test question from a plurality of test questions that are to be provided to the client device during administration of the test. Moreover, the Office Action may not use the claimed invention as an "instruction manual" or "template" to piece together the teachings of the prior art so that the invention is rendered obvious.

In view of the above, New, Hoehn-Saric, Turner and Dattatri, taken either alone or in combination, fail to teach or suggest the specific features recited in independent claims 6 and 29, from which claims 21 and 44 depend. Accordingly, Applicants

respectfully request withdrawal of the rejection of claims 21 and 44 under 35 U.S.C. § 103(a).

VII. 35 U.S.C. § 103, Alleged Obviousness, Claims 22 and 45

The Office Action rejects claims 22 and 45 under 35 U.S.C. § 103(a) as being unpatentable over New/Hoehn-Saric as applied to claims 6 and 29 above, and further in view of Dattatri. This rejection is respectfully traversed.

Claims 22 and 45 are dependent on independent claims 6 and 29 and, thus, these claims distinguish over New and Hoehn-Saric for at least the reasons noted above with regards to claims 6 and 29. Moreover, Dattatri does not provide for the deficiencies of New and Hoehn-Saric and, thus, any alleged combination of New, Hoehn-Saric and Dattatri would not be sufficient to reject independent claims 6 and 29 or claims 22 and 45 by virtue of their dependency. That is, Dattatri does not teach receiving test question timing data from the client device, the test question timing data representing an elapsed time used by the remotely located user in attempting to answer a test question from a plurality of test questions that are to be provided to the client device during administration of the test. Moreover, the Office Action may not use the claimed invention as an "instruction manual" or "template" to piece together the teachings of the prior art so that the invention is rendered obvious.
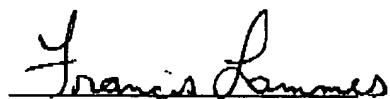
In view of the above, New, Hoehn-Saric and Dattatri, taken either alone or in combination, fail to teach or suggest the specific features recited in independent claims 6 and 29, from which claims 22 and 45 depend. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 22 and 45 under 35 U.S.C. § 103.

VIII.   Conclusion

It is respectfully urged that the subject application is patentable over the prior art of record and is now in condition for allowance. The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

Respectfully submitted,

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